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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1418

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, *et al.*,

Petitioners,

v.

RUDOLPH A. RICHARDS, RAY ELBERT PARKER, *et al.*,

Respondents.

ON APPEAL FROM THE SUPREME COURT OF VIRGINIA

BRIEF OF RESPONDENT RAY ELBERT PARKER IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

RAY ELBERT PARKER
7702 Schelhorn Road
Alexandria, Virginia 22306

Counsel for Respondent Pro Se.

Washington, D.C. • THIEL PRESS • (202) 638-4521

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To The Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

OPINIONS BELOW

The opinion of the Supreme Court of Virginia is reported at 217 Va. ____, 231 S.E.2d 231.

JURISDICTION

The judgment of the Supreme Court of Virginia was entered on January 14, 1977. This Court has jurisdiction pursuant to 28 U.S.C. §1257 (3).

QUESTION PRESENTED

Whether Arlington County, Virginia, can delegate public powers conferred upon the municipality to private property owners with intent to divide the citizenry on the basis of property as a pretext for unequal and exclusive rights of one class of citizens over the rights of another class of citizens through a Parking Permit Ordinance delegating police power to inhibit constitutional rights under threat of punishment, state action and a set of rules not operating alike on all citizens of the Commonwealth of Virginia?

STATUTES AND CONSTITUTION PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the law.*"

42 U.S.C. §1983 provides,

> "Every person who, *under color of any statute, or Ordinance*, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or im-

> munities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 28 U.S.C. §1343.

Section 29.D of the Zoning Ordinance of Arlington County, Virginia, provides in pertinent part:

> ". . . The County Manager shall cause appropriate signs giving notice of the prohibition to be posted in those streets restricting all parking except parking by the holders of permits to be granted *only* under the following conditions:
>
> a. To persons who are *residents* . . . restricted for every vehicle owned by those persons and registered in the County.
>
> b. To persons who are *visitors* of any residents . . . to be valid for a stated period but no more than thirty days. . . .
>
> c. To *persons who do business* with any resident. . . .
>
> d. No permit issued hereunder shall be valid for more than one year, but may be renewed upon expiration . . . it shall be unlawful for any person to violate such rules and regulations."

United States Constitution, Article 1 §8.

United States Constitution, Article IV §2.

Virginia Constitution §§1, 3, 4, 11, 15.

STATEMENT OF THE CASE

On or about May 2, 1974, Petitioners, reacting to political, business and community pressure groups during an election year, submitted to the Arlington County Board a plan for the establishment of a permit parking scheme which would give the property owners of South Arlington County, Virginia, exclusive privileges

denied to other citizens of the County and to all other citizens of the Commonwealth of Virginia. The recommended permit parking plan required governmental action by and through the Petitioners' herein, their agents, servants and employees.

The purpose of the bill was to radically alter the patterns of residential street parking in congested urban areas. The bill permitted Arlington County, Virginia to issue permits for motor vehicles parking on public streets and made distinctions between outside people and residents in that it did not operate alike on all persons and property under the same circumstances. The point of the bill was to allow Arlington County to mark off certain areas and to guarantee parking spaces for residents who live in those areas that are flooded daily by outside parkers, while restricting the public use and enjoyment of the way for non-residents; further, there was nothing in the bill to prevent or discourage the County from requiring permits to restrict movement for every possible public street parking space in Arlington County, Virginia.

Arlington County, Virginia was the first community in the United States to implement such a law and devise a permit parking plan for a residential neighborhood for the sole purpose of excluding a select and well-defined group of citizens from parking in a public residential area. The Petitioners' saw the need based on political considerations for such permits and moved to enact an Ordinance which would restrict parking by blocks, setting off permit spaces equal to the number of houses on each block and giving block residents "exclusive rights" to permits for their cars and conferring upon the residents a "proprietory" interest in the public street, while at the same time denying the permits to non-residents (including residents from other parts of Arlington County).

On or about May 18, 1974, the Arlington County Board passed a motion authorizing and directing Petitioners', acting by and through their agents, servants and employees of Arlington County, to proceed with the implementation of the aforesaid permit parking plan in the designated pilot residential zone in accordance with Section 29-D of the Zoning Ordinance of Arlington County, Virginia. The only persons eligible for parking permits were property owners, their visitors and persons with whom they do business.

The permit parking plan provided that each household unit in the designated pilot area would be given, free of charge, permit stickers to be placed upon each and every motor vehicle owned by those persons and registered with the County. Possession of such a parking permit sticker enabled the motor vehicle displaying the orange sticker to be parked upon the public streets in the aforesaid area each day for one year without violating the law. This parking permit could be renewed by the same property owner each year or in the alternative by any new owner acquiring the property through sale, purchase or other legal means. In addition, the property owner could obtain, free of charge, thirty-day permits for persons visiting or doing business with the property owner. These permits could be renewed only by the property owner at the end of each month.

The Ordinance made it unlawful and punishable, by law, to park any vehicle in a designated area without a valid permit. All citizens not possessing such a permit sticker were subject to charges of a misdemeanor, or criminal prosecution, if such citizen used the said public streets for parking a vehicle during the prohibited times. Of the said selected residential areas and residences, most had driveways which permitted off-street parking.

Respondent, RAY ELBERT PARKER, and others similarly situated, were employed in Crystal City, Virginia and filed two Bills of Complaint in two separate cases which were consolidated for trial purposes. The respondents asked for a declaration that the Ordinance both on its face and in its application to each of them was unconstitutional.

After extensive trial and argument, the Circuit Court for Arlington County, Virginia in its Order of June 18, 1975 found the Ordinance to be in violation of both the Constitution of the Commonwealth of Virginia and the Constitution of the United States. The Supreme Court of Virginia affirmed the lower court in a six-judge per curiam decision on January 14, 1977.

REASONS FOR DENYING THE WRIT

I.

WHETHER ARLINGTON COUNTY, VIRGINIA, CAN DELEGATE PUBLIC POWERS CONFERRED UPON THE MUNICIPALITY TO PRIVATE PROPERTY OWNERS WITH INTENT TO DIVIDE THE CITIZENRY ON THE BASIS OF PROPERTY AS A PRETEXT FOR UNEQUAL AND EXCLUSIVE RIGHTS OF ONE CLASS OF CITIZENS OVER THE RIGHTS OF ANOTHER CLASS OF CITIZENS THROUGH A PARKING PERMIT ORDINANCE DELEGATING POLICE POWER TO INHIBIT CONSTITUTIONAL RIGHTS UNDER THREAT OF PUNISHMENT, STATE ACTION AND A SET OF RULES NOT OPERATING ALIKE ON ALL CITIZENS OF THE COMMONWEALTH OF VIRGINIA.

The law of the Commonwealth of Virginia does not delegate or vest Arlington County Boards with power to inhibit constitutional rights without according other citizens of the Commonwealth of Virginia the opportunity to enjoy the same privileges and benefits. *State v. Whisman*, 263 N.E.2d 411 (Ohio, 1970); *Cincinnati v. Cook*, 107 Ohio St. 223.

A government employee commuting to work is forced to observe one set of rules under terms of the Ordinance not required of others since the Arlington County Ordinance provides residential parking convenience for homeowners at the expense of parkers. The lower courts found this to be a denial of due process, equal protection and a law that was in effect a "special" law and intentional exercise of legislative power to confer special privileges upon a particular class of citizens or in the alternative a law that was intended to impose special restrictions and burdens upon particular persons or localities to the exclusion of other persons or localities similarly situated. Likewise, the Arlington County law violates the Interstate Commerce Act since it allows the County to reach beyond its own border to bar transportation of persons *across* its boundaries as well as to bar transportation of persons *within* its boundaries.

It is asserted that the protection of the right to travel and movement is a *civil right* subject to judicial review where public facilities are dedicated to private persons for the sole purpose of excluding a particular individual or group of citizens traveling. The right of travel implies by its very nature the right to arrive at one's destination. Indeed, the right of travel of government employees using public facilities may not be lawfully conditioned upon relinquishing constitutional rights as a prerequisite to employment in Arlington County, Virginia. *Thompson v. Smith*, 155 VA. 367, pp. 377, 386.

Under the Ordinance, the property owner in South Arlington, Virginia, has a right superior to that of any other citizen of the Commonwealth of Virginia in the use of the public street by granting of a parking right to the residents in contravention of the well-established

rights of the general public of which respondent is a member.

The Ordinance in effect gives a home owner a "proprietory" interest in the public street fronting his home. This is not a valid exercise of the police power to control streets and regulate traffic thereon. There is no taking from the owner of property the rights of "ingress" and "egress" to their premises, but rather the conferring upon the home owner of a proprietory interest in the street, which he may transfer to whomsoever he may choose (sale, will, etc.) and such rights enforced by the provision of the ordinance.

The principle involved is fundamental and of universal application, namely, that public powers conferred upon a municipality cannot be delegated to private property owners. *Town of Leesburg v. Tavenner*, 196 VA. 80 (1954), 85, 84-85; *Thompson v. Smith*, 155 VA 367, 379 (1930); *Kaufman v. West, et al.*, 233 Pacific 321 (Sup. Ct. Washington, 1925). The permit parking plan in effect in Arlington County demonstrates an intentional exercise of legislative power to confer special privileges and immunities or in the alternative special restrictions and burdens upon particular persons or localities to the exclusion of other persons or localities similarly situated. Therefore, the law does not generally apply to all persons and property in a uniform manner. *Farmer v. Christian*, 154 VA 48 (1930); 42 U.S.C. §1983.

An Ordinance cannot "unreasonably" restrict the public use and enjoyment of the streets. Indeed, to allow this madness would be the first step toward a "permit" society. It is, therefore, not what the Arlington County law includes that makes it special, but rather what it excludes.

WHEREFORE, Respondent, RAY ELBERT PARKER, respectfully submits that the questions upon which this cause depend are so unsubstantial as not to need further argument or review, and Respondent respectfully moves the Court to dismiss the appeal or in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Virginia on January 14, 1977.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

RAY ELBERT PARKER
7702 Schelhorn Road
Alexandria, Virginia 22306

Counsel for Respondent Pro Se.